Supreme Court, U. S.
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In the Supreme Court

of the United States

OCTOBER TERM, 1976

No. 76-34

THE SPECK RESTAURANT, INC.,

Appellant,

v.

THE OREGON LIQUOR CONTROL COMMISSION,

Appellee.

On Appeal from the Court of Appeals of the State of Oregon

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

	Page
Jurisdictional Statement	1
Opinion Below	2
Jurisdiction	2
Questions Presented	3
Statutes Involved	3
Statement	4
The Questions Presented Are Substantial	9
Appendix A	App. 1
Appendix B	App. 11
Appendix C	App. 12

INDEX OF AUTHORITIES

Page

CASES CITED

Bergford v. *Clackamas County*, 15 Or. App. 362, 515 P.2d 1345 (1973) 13-14

Berkey v. *Third Ave. Ry. Co.*, 244 N.Y. 84, 155 N.E. 58 (1926) 11

California Beer W. Ass'n v. *Alcoholic Bev. Con. App. Bd.*, 96 Cal. Rptr. 297, 299-301, 487 P.2d 745 (1971) 10

California v. *LaRue*, 409 U.S. 109, 93 S. Ct. 390, 34 L. Ed. 2d 342 (1972) 12

Charleston Fed. Sav. & L. Assoc. v. *Alderson*, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857 (1945) 3

Cherbonnie v. *Kugler*, 358 F. Supp. 256, 259 (D. N.J. 1973) 13

Colten v. *Kentucky*, 407 U.S. 104, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972) 13

CSC v. *Letter Carriers*, 413 U.S. 548, 579, 93 S. Ct. 2880, 2897, 37 L. Ed. 2d 796, 816 (1973) 12

Daugherty v. *Daley*, 370 F. Supp. 338 (N.D. Ill. E.D. 1974) 9

Lanzetta v. *New Jersey*, 306 U.S. 451, 59 S. Ct. 618, 83 L. Ed. 888 (1939) 12

Palm Gardens, Inc. v. *OLCC*, 15 Or. App. 20, 514 P.2d 888 (1973) 11

Papachristou v. *City of Jacksonville*, 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972) .. 13

Sportservice Corp. v. *OLCC*, 15 Or. App. 226, 515 P.2d 731 (1973) 11

Winters v. *New York*, 333 U.S. 507, 68 S. Ct. 665, 92 L. Ed. 840 (1948) 3, 13

INDEX OF AUTHORITIES (Cont.)

Page

Wisconsin v. *Constantineau*, 400 U.S. 433, 91 S. Ct. 507, 27 L. Ed. 2d 515 (1971) 9

Women's Liberation Union of R. I. v. *Israel*, 512 F.2d 106 (1st Cir. 1975) 12

Statutes

Ore. Rev. Stat. 471.455(1) 3, 4, 7, 8, 10, 14, 15
Ore. Rev. Stat. 472.110(2) 10
Ore. Rev. Stat. 472.160(3) 3, 4, 7, 8, 10, 14, 15
Ore. Rev. Stat. 472.180(11) 3, 4, 7, 8, 10, 14
28 U.S.C. § 1257(2) 3

Textbooks

1 Fletcher, Cyclopedia Corporations (rev. ed. 1974) § 43 11

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THE SPECK RESTAURANT, INC.,

Appellant,

v.

THE OREGON LIQUOR CONTROL COMMISSION,

Appellee.

On Appeal from the Court of Appeals of the State of Oregon

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Court of Appeals of the State of Oregon entered on April 14, 1976 affirming the findings of fact, conclusions of law and order of the Oregon Liquor Control Commission, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Court of Appeals of the State of Oregon is reported at 24 Or. App. 337, 545 P.2d 601 (1976). The Findings of Facts, Conclusions of Law and Order of the Oregon Liquor Control Commission are not reported. Copies of the Findings of Fact, Conclusions of Law and Order, the Opinion, Judgment, Notice declining reconsideration by the Oregon Court of Appeals, and Notice from the Oregon Supreme Court denying review of the decision of the Court of Appeals, are printed in Appendix A.

JURISDICTION

This proceeding was brought under Ore. Rev. Stat. 471.455(1), 472.160(3) and 472.180(11) for revocation of appellant's liquor license issued by appellee. Appellant appealed to the Oregon Court of Appeals the findings of fact, conclusions of law and order of the Oregon Liquor Control Commission revoking its license and, among other issues, argued that the above statutes were repugnant to the Due Process of the Fourteenth Amendment to the United States Constitution. By judgment of the Oregon Court of Appeals on April 14, 1976 the statutes were held to be constitutionally valid. The Court's opinion was issued February 19, 1976. The Court did not issue its judgment until after the Oregon Supreme Court determined on April 14, 1976 that it would not review the opinion of the Court of Appeals.

Appellant filed its notice of appeal to the Supreme Court of the United States in the Oregon Court of Appeals on June 30, 1976. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal of this case: *Winters* v. *New York*, 333 U.S. 507, 68 S. Ct. 665, 92 L. Ed. 840 (1948); *Charleston Fed. Sav. & L. Assoc.* v. *Alderson*, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857 (1945).

QUESTIONS PRESENTED

1. Whether the power granted a state by the Twenty-first Amendment to the United States Constitution to regulate the liquor trade within its boundaries requires a state to conform to the Due Process clause of the Fourteenth Amendment by not enacting liquor control statutes which are so vague and imprecise that a retail liquor licensee seeking to comply with the statutes is left with no guidance as to what conduct is prohibited by them.

2. Whether the statutes in question are so vague and imprecise as to offer no guidance to appellant and others seeking to comply with them as to what conduct the statutes prohibit.

STATUTES INVOLVED

Ore. Rev. Stat. 471.455(1), 472.160(3), and 472.180(11) are set forth in Appendix B hereto.

STATEMENT

This is an appeal from a decision of the Oregon Liquor Control Commission (hereinafter "Commission" or "OLCC") after a hearing before a Hearings Examiner refusing to renew and revoking a dispenser's Class A liquor license held by appellant, The Speck Restaurant, Inc. (hereinafter "The Speck"). The license allows appellant to operate a bar for selling liquor by the drink.

The sole basis for the OLCC's decision is the fact that petitioner operates a fried chicken restaurant under a franchise from Kentucky Fried Chicken Corporation, now KFC Corp. (hereinafter "KFC"). KFC is a wholly owned subsidiary of Heublein, Inc., a manufacturer and distributor of food products and alcoholic beverages.

The Commission issued its Findings of Fact, Conclusions of Law and Order on June 18, 1975, refusing to renew and revoking the license for appellant's alleged violation of Ore. Rev. Stat. 471.455(1) on the grounds that the franchise between the Speck and KFC gives a manufacturer of alcoholic beverages an "interest" in the business of appellant; and for appellant's alleged violation of Ore. Rev. Stat. 472.160 (3) on the grounds that through the franchise with KFC petitioner has a "connection with" a manufacturer of alcoholic beverages, i.e. Heublein. The Commission also found that appellant had therefore violated Ore. Rev. Stat. 472.180(11) which grants the

Commission power to revoke licenses for "any other reason . . . which warrants canceling or suspending such license." (See Findings of Ultimate Fact and Conclusions of Law A-E; Appendix A).

The Speck operates a restaurant and a bar at 12329 N. E. Glisan Street, Portland, Oregon (R. 31).[1] The restaurant has operated since the early 1950's under a chicken restaurant franchise granted by Kentucky Fried Chicken Corporation ("KFC") (R. 33, 124).

In 1959 the Oregon Liquor Control Commission granted The Speck a dispenser's Class A license (allowing the licensee to sell liquor by the drink) (R. 19-20). The Speck has continuously operated a bar under this license to the present. The Commission has received no complaints about petitioner's bar and has filed no charges of violations of any sort against petitioner except for this proceeding (R. 20).

The petitioner presently sells fried chicken under a franchise contract executed December 1, 1965 (replacing an earlier contract) with an amendment dated October 31, 1972 (R. 33, 42-63). Pursuant to the franchise contracts, KFC receives a nine cent service charge on each chicken purchased by petitioner for resale to the public from its Kentucky Fried Chicken restaurant (R. 33). The contract gives KFC the right to stipulate as to the manner of preparing and selling fried chicken and related food items (R. 42-49).

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[1] Citation is to the record before the Oregon Court of Appeals.

KFC is engaged in the operation of more than 800 of its own Kentucky Fried Chicken stores and in franchising approximately 3,000 more food outlets in the United States and foreign countries (R. 34). All restaurants and chicken stores owned or franchised by KFC are principally engaged in the preparation and sale of Colonel Sander's Kentucky Fried Chicken and other fast food meals (R. 35). KFC neither produces, brews, ferments, manufactures, or blends alcoholic beverages or malt liquor in the State of Oregon or any other state (R. 35). In 1971 KFC became a wholly owned subsidiary of Heublein, Inc. (R. 34).

Heublein is engaged in the manufacture and sale of food products and alcoholic beverages (R. 34). Heublein sells alcoholic beverages to the OLCC in Menlo Park, California, which the OLCC imports into Oregon and retails to the public and to licensees, such as petitioner, at prices established by the OLCC (R. 34-35).

Neither petitioner nor any affiliated corporation has ever paid any sum, as a franchise fee or otherwise, to KFC related in any way to petitioner's sales of alcoholic beverages (R. 33-34). Neither petitioner nor any affiliated corporation has ever paid any sum, as a franchise fee or otherwise, to Heublein related in any way to The Speck's sale of alcoholic beverages or its sale of chicken (R. 33, 113, 174).

In both 1972 and 1973 petitioner had nearly $100,000 in gross liquor receipts and over $500,000 in gross food receipts (R. 94).[2] Petitioner's royalties to

KFC, which are related solely to the number of chickens purchased for resale, amounted to a total of approximately $11,000 for 1972 and 1973 (R. 94).

The Commission commenced its investigation on the mistaken belief of Donald E. Riley, an investigator in the OLCC's enforcement division, that the petitioner paid a royalty to Heublein and that the royalty was based on liquor receipts (R. 20).

The appellant raised the constitutional invalidity of the statutes for vagueness in its written and oral arguments to the Oregon Liquor Control Commission (Licensee's Memorandum, R. 148, 165-169; oral argument to hearings examiner, R. 126-129) in its Objections to the hearing examiner's Proposed Findings of Fact, Conclusions of Law and Order (R. 223, 227, pp. 236-238). The OLCC responded to the federal question raised by appellant by adopting its hearings examiner's Proposed Findings of Fact, Conclusions of Law and Order. (See Final Findings of Fact, Conclusions of Law and Order; Appendix A.)

On July 30, 1975 appellant filed its petition for judicial review of the OLCC's Findings of Fact, Conclusions of Law and Order in the Court of Appeals of the State of Oregon (R. 252). In its Petition for Judicial Review appellant raised the constitutional invalidity of the statutes:

> "(f) ORS 471.455(1), 472.160(3) and 472-.180(11) violate the due process clause of the

[2] Figures for subsequent years were not available when this proceeding began.

> Fourteenth Amendment of the United States Constitution . . . ." (R. 253).

Appellant then argued the constitutional invalidity of the statutes to the Court of Appeals under the Third Proposition of Law, Sixteenth Assignment of Error, in Petitioner's Brief and Abstract of Record (Br. pp. 44-48).

The Court of Appeals rejected defendant's contention that the statutes were constitutionally invalid as being too vague to afford notice to the licensee of what conduct was prohibited. The Court of Appeal's opinion of February 9, 1976 referring solely to Ore. Rev. Stat. 471.455(1) stated at 545 P.2d 602:

> ". . . The statute is plain and unambiguous. We are not at liberty to read into it what it does not contain, nor to remove from it what it does. *Franklin* v. *State Ind. Acc. Com.*, 202 Or. 237, 274 P.2d 279 (1954). Petitioner contends in its brief that the Commission's decision stems from its insistence upon reading the statutes literally. The Commission is required to follow a plain and unambiguous statute just as we are."

The Court of Appeals did not discuss the challenge to Ore. Rev. Stat. 472.160(3) and 472.180(11).

On March 9, 1976, appellant filed in the Oregon Supreme Court a Petition for Review of the decision of the Court of Appeals raising the issue of the constitutional validity of the statutes (Petition, p. 26-27). Pursuant to Rule 9.15, Rules of Procedure, Supreme Court and Court of Appeals of the State of Oregon (1974), appellant filed copies of the petition with the

Court of Appeals. By order of March 17, 1976 the Court of Appeals declined to reconsider its decision. On April 13, 1976 the Oregon Supreme Court denied review of the decision. On April 14, 1976 the Court of Appeals issued its judgment affirming the OLCC.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The principal issue raised by this appeal is similar to that considered by this Court in *Wisconsin* v. *Constantineau*, 400 U.S. 433, 91 S. Ct. 507, 27 L. Ed. 2d 515 (1971). That is, whether in exercising control over the sale and consumption of alcoholic beverages pursuant to the Twenty-first Amendment of the United States Constitution, a state must nevertheless comply with the Due Process Clause of the Fourteenth Amendment. The instant appeal, however, raises a more specific question not yet considered by this Court but treated by the District Court for the Northern District of Illinois in *Daugherty* v. *Daley*, 370 F. Supp. 338 (N.D. Ill. E.D. 1974): whether a statute which is so overbroad and vague as to violate the Fourteenth Amendment to the United States Constitution is saved by the power to regulate the sale of alcoholic beverages under the Twenty-first Amendment. The District Court held that it was not saved. 370 F. Supp. 341.

Long before KFC became a subsidiary of Heublein, the Oregon Liquor Control Commission granted appellant a liquor license. In part, the license was granted because The Speck operated a food service facility as

required by Oregon law for liquor licensees. Ore. Rev. Stat. 472.110(2). Appellant's food facility was a franchised Kentucky Fried Chicken restaurant (R. 33, 124). Oregon's liquor control statutes however failed to warn appellant that it would lose its valuable license if its franchisor, Kentucky Fried Chicken Corporation, became a subsidiary of a manufacturer of alcoholic beverages. Appellant had no control over the subsequent merger of Kentucky Fried Chicken Corporation into Heublein. Since the merger, however, KFC has maintained its substantial, independent corporate identity, and franchise remains limited solely to the preparation and sale of fried chicken. The Speck has no business relationship with Heublein.

Ore. Rev. Stat. 471.455(1) which prohibits a manufacturer from having "any . . . interest, financial or otherwise" in the business of a licensee, and Ore. Rev. Stat. 472.160(3) which prevents a manufacturer from having "any connection" with a retailer are "tied house statutes," common to many states. They are intended to prevent manufacturers of alcoholic beverages from having influence or control in retail sale of alcoholic beverages. See generally, *California Beer W. Ass'n* v. *Alcoholic Bev. Con. App. Bd.*, 96 Cal. Rptr. 297, 299-301, 487 P.2d 745 (1971). However, these statutes, together with Ore. Rev. Stat. 472.180(11), which allows the Commission to revoke a liquor license for any reason which in the opinion of the Commission is "based on public convenience or necessity", do not fairly warn of the type of activity prohibited, especially that the franchise in this case is a

prohibited activity simply because the franchisor has become a subsidiary of a beverage manufacturer. The OLCC has issued no regulations defining the terminology of these statutes (See Finding of Ultimate Fact and Conclusion of Law E; Appendix A).

The Court of Appeals concludes that although Kentucky Fried Chicken Corporation is not a manufacturer of alcoholic beverages, the fact that The Speck has a relationship with a subsidiary of a conglomerate which manufactures alcoholic beverages thereby constitutes a "connection" and an "interest" between The Speck and the parent corporation, Heublein. Such a conclusion is warranted only if KFC were a mere sham, deliberately established to evade the liquor laws. But as long as KFC maintains its separate corporate identity, The Speck's relationship only runs to KFC, not to Heublein. See Judge Cardozo's opinion in *Berkey* v. *Third Ave. Ry. Co.*, 244 N.Y. 84, 155 N.E. 58 (1926); 1 Fletcher, Cyclopedia Corporations (rev. ed. 1974) 209, § 43. There is no evidence in the record to support a conclusion that KFC is a sham or was used by Heublein to avoid the law. A careful review of the OLCC Findings of Fact and Conclusions of Law show that no such finding of fact or conclusion of law was actually made. *Cf. Palm Gardens, Inc.* v. *OLCC*, 15 Or. App. 20, 514 P.2d 888 (1973) and *Sportservice Corp.* v. *OLCC*, 15 Or. App. 226, 511 P.2d 731 (1973), where the subsidiaries were actually found to be illusory, or established for the purpose of evading the liquor laws.

In *California* v. *LaRue*, 409 U.S. 109, 93 S. Ct. 390, 34 L. Ed. 2d 342 (1972) the Supreme Court reviewed cases in which it had recognized the Twenty-first Amendment as ". . . conferring something more than the normal state authority over public health, welfare and morals," 409 U.S. at 114, 93 S. Ct. at 395 and noted that "[t]hese decisions did not go so far as to hold or say that the Twenty-first Amendment supersedes all other provisions of the United States Constitution in the area of liquor regulations." Id. at 115, 93 S. Ct. at 395. See *Women's Liberation Union of R. I.* v. *Israel*, 512 F.2d 106 (1st Cir. 1975) holding that the Equal Protection Clause of the Fourteenth Amendment prohibits irrational classification based on sex in the liquor laws when states regulate the sale of liquor.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that statutes must possess a minimum degree of certainty, definiteness, and clarity. The United States Supreme Court has recently held that the test of whether a statute is unconstitutionally vague is whether the statutory prohibitions are

> ". . . [S]et out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." *CSC* v. *Letter Carriers*, 413 U.S. 548, 579, 93 S. Ct. 2880, 2897, 37 L. Ed. 2d 796, 816 (1973).

A similar statement of the test was articulated in *Lanzetta* v. *New Jersey*, 306 U.S. 451, 59 S. Ct. 618, 83

L. Ed. 888 (1939), where the Court held unconstitutionally vague the phrase "known to be a member of any gang." There the Court stated:

> "'. . . [A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.'" 306 U.S. at 453, 59 S. Ct. at 619, 83 L. Ed. at 890.[3]

The test for vagueness has been specifically applied to state ordinances dealing with the sale of alcoholic beverages and has been formulated in similar terms:

> ". . . Uncertainty cannot exist either with respect to the scope of the acts encompassed by the statute, or with regard to the substantive standards to be applied to the conduct." *Cherbonnie* v. *Kugler*, 359 F. Supp. 256 (D. N.J. 1973). See also *Winters* v. *New York*, 333 U.S. 507, 515-516, 68 S. Ct. 665, 92 L. Ed. 840 (1948).

The Oregon Court of Appeals has stated the test similarly in *Bergford* v. *Clackamas County*, 15 Or. App. 362, 515 P.2d 1345 (1973):

> ". . . Certainty is one of the prime requisites of an ordinance; it is essential to its validity. The

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[3]. See also *Papachristou* v. *City of Jacksonville*, 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972), where the court held unconstitutionally vague the phrases "prowling by auto," "common thief," "vagabonds," "loitering," "disorderly conduct;" and *Colten* v. *Kentucky*, 407 U.S. 104, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972), where the Court upheld the constitutionality of the words "refuses to comply with a lawful order of the police to disperse."

ordinance must be definite enough to serve as a guide to those who have a duty imposed upon them to apply the provisions of the ordinance." 15 Or. App. at 365, 515 P.2d at 1347.

Applying these tests of unconstitutional vagueness to Ore. Rev. Stat. 471.455(1), Ore. Rev. Stat. 472.160 (3), and Ore. Rev. Stat. 472.180(11) reveals that these statutes are so vague as to leave those seeking to comply with no guidance as to what conduct is prohibited, and, as in this case, they invite arbitrary enforcement and deprive the Court of standards for review. These statutes prohibit a manufacturer from having an "interest, financial or otherwise" in a retailer, from having "any connection" with a retailer, and allow the Commission to revoke a license for any other reason, which in the opinion of the Commission, is warranted by "public convenience or necessity." No interpretive rules or standards exist to define these terms. It is apparent that there is a myriad of attenuated relationships between retailers and manufacturers which, while entered into for legitimate purposes, might be deemed by the Commission to be a violation. These stretch from social get togethers, to attending promotional meetings, to exchanging trade and market information, to forming contracts which have no relation to alcoholic beverage sales. The statutes, lacking any standards, and containing such broad and vague language, provide the licensee with no real guidance as to which business and social relationships are prohibited and which are not. The licensee must guess at whether a given relationship is illicit, and must do so

at the substantial peril of losing its license. This inability to discriminate between illicit and licit conduct is the very essence of an unconstitutionally vague statute.

The statutory uncertainty is enhanced by the Commission's interpretation that any relationship which poses the theoretical possibility, in the Commission's estimation, of a connection between licensees is a violation (See Finding of Ultimate Fact and Conclusion of Law B; Appendix A). Furthermore, because retailers and wholesalers have the same ultimate business interest of selling liquor, the retail licensee will inevitably have relationships with manufacturers which the Commission may, or may not, find to be a violation.

The critical words of Ore. Rev. Stat. 471.455(1) and 472.160(3), an "interest, financial or otherwise" and "any connection" are by their nature words that do not have a common specific meaning, but rather a generalized and expansive meaning. Without standards these vague words do not have commonly understood meanings and licensees are left with no means available to interpret these statutes nor to anticipate the Commission's interpretation and to accordingly conform their conduct.

Nothing in the statutes gives fair warning to a liquor licensee, such as appellant, that an innocuous franchise for the sale of fried chicken from a large worldwide corporation, maintaining a substantial independent corporate existence apart from that of its parent, grants the parent corporation an interest "fi-

nancial or otherwise" in the business of the licensee, or constitutes "any connection" between the licensee and the parent or establishes any other reason "warranted by public necessity or convenience" for revoking a liquor license. Clearly, this appeal presents a substantial question for review by the Supreme Court.

Respectfully submitted,

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By GEORGE H. FRASER

July 8, 1976

APPENDIX

APPENDIX A

BEFORE THE

OREGON LIQUOR CONTROL COMMISSION

v.

THE SPECK RESTAURANT, INC.

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Oregon Liquor Control Commission, having considered the entire record in this matter makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Speck Restaurant, Inc., ("The Speck") an Oregon corporation, was issued a Dispenser's Class "A" license for its sit-down restaurant and bar known as "The Speck Restaurant" located at 12329 N. E. Glisan (licensed premise), Portland, Oregon.

2. The Speck is a wholly owned subsidiary of The Speck Enterprises, Inc., an Oregon corporation, ("Speck Enterprises") which is the successor to Col. Ervin E. Hanks. Speck Enterprises has been a wholly owned subsidiary of Collins Foods International ("Collins"), a California corporation since June, 1972.

3. The Speck sells Kentucky Fried Chicken pursuant to a franchise contract, (Stipulation, Ex. "B") with amendments thereto, between Kentucky Fried

Chicken Corporation (presently known as KFC Corporation) a Delaware corporation, (the successor to Kentucky Fried Chicken Corporation, a Kentucky corporation), The Speck and Col. Ervin E. Hanks. The Speck has succeeded to Mr. Hank's interest in the contract.

4. Under the franchise contract, The Speck is entitled to use certain KFC Corporation owned recipes, trademarks, service marks, copyrights, patent rights, and the name, autograph, portrait and photograph of Colonel Harland Sanders.

5. In exchange for the consideration specified in Finding 4 above, The Speck has paid and is obligated to pay a service charge to KFC Corporation which presently is set at nine cents for each chicken purchased by The Speck for resale to the public. (Stipulation Ex. "B", art II(a); Ex "C", para. 4.(2). Those royalties amounted to approximately $11,000 total for 1972 and 1973.

6. In exchange for the consideration specified in Finding 4 above, The Speck also agreed in the franchise contract to submit to extensive control by KFC Corporation of the details of operating its business including the following:

"ARTICLE IV. STANDARD OF QUALITY; SUPERVISION

* * * *

(j) LICENSEE [The Speck] agrees to order, promote and sell such additional items used in food preparation and such items as LICENSOR

might develope from time to time and determine to be necessary for LICENSEE to take fullest advantage of the potential retail market of his location."

7. Since 1971 KFC Corporation and its predecessors have been wholly owned subsidiaries of Heublein, Inc., a Connecticut corporation ("Heublein").

8. Heublein is presently, and at all times relevant herein was, principally engaged in the manufacture and sale of alcoholic beverages and food products.

9. The business of The Speck at the licensed premises is required by section 39 of article I of the Oregon Constitution, ORS 472.110 and section 10-185 of chapter 845 of Oregon Administrative Rules, to consist of the retail sale and service of both liquor and food.

10. Heublein, as the sole shareholder of KFC Corporation has the potential to absolutely control KFC Corporation; financial benefit to KFC Corporation indirectly benefits Heublein.

FINDINGS OF ULTIMATE FACT AND CONCLUSIONS OF LAW

A. KFC Corporation's rights, claims and interests as specified in Findings 5 and 6 above constitute rights, claims and interests financial and otherwise in, upon or to the business of The Speck.

B. The policy of ORS 471.455(1) is to maintain the business of production of liquor absolutely independent from the business of retail sale of liquor. The

statute implements its purpose by prohibiting *business* relationships between manufacturers and retailers which involve not only actual but also *potential* control of retailers by manufacturers. The statute is prophylactic. To allow Heublein to insulate itself behind its wholly owned subsidiary would allow Heublein to frustrate the policy of the statute and allow Heublein to evade the authority of the OLCC. Therefore the rights, claims and interests of KFC Corporation specified in Finding A above are attributable to its parent Heublein.

C. The rights, claims and interests of Heublein, as specified in Findings 5, 6, A and B above, constitute rights, claims and interests, financial and otherwise in, upon or to the business of The Speck, a licensee authorized to sell alcoholic liquor at retail, in violation of ORS 471.455(1).

D. We have the authority under ORS 472.160(3) to refuse an applicant a license, including a renewal, if the applicant for a retail license has "any connection with" a manufacturer. We may also suspend or revoke a license pursuant to ORS 472.180(11) for any other reason which in our opinion based on public convenience and necessity, warrants such action. In the context of this case the broad language of ORS 472.160(3) and 472.180(11) should be limited by interpreting them to incorporate the express terms of the related prohibition contained in ORS 471.455 (1) and be thereby limited. We so construe those statutes and therefore find that by violating ORS 471.455

(1), as specified in Finding C, above, The Speck has also violated ORS 472.160(3) and 472.180(11).

E. ORS 471.455(1), 472.160(3), and 472.180(11) as interpreted and applied in this case are not vague, are not overly broad, and do not require interpretative rules. It would serve no useful purpose to enumerate by rule the myriad of business relationships which violate the statute. It would be impossible to define in advance all such relationships.

ORDER

The OLCC hereby refuses to renew and revokes the Class A Dispenser License held by The Speck Restaurant, Inc. for its premises located at 12329 N. E. Glisan Street, Portland, Oregon. June 18, 1975.

OREGON LIQUOR CONTROL COMMISSION

/s/ *Mr. Sydney L. Chandler*
Mr. Sydney L. Chandler
/s/ *Rev. Eric G. Gration*, Member
Rev. Eric G. Gration, Member
/s/ *Ms. Eleanor Forrester*, Member
Ms. Eleanor Forrester, Member

No. 53—February 9, 1976

IN THE COURT OF APPEALS OF THE STATE OF OREGON

THE SPECK RESTAURANT, INC.,
Petitioner,

v.

OREGON LIQUOR CONTROL COMMISSION,
Respondent.

(CA 4928)

Judicial Review from Oregon Liquor Control Commission.

Argued and submitted December 19, 1975.

FORT, J.

Petitioner was denied a renewal of its liquor license by the Oregon Liquor Control Commission and appeals. This matter was heard upon stipulated facts. We summarize pertinent portions. Petitioner, The Speck Restaurant, Inc., has for a number of years been a holder of a Class A retail dispenser's license from respondent Commission and sells alcoholic beverages pursuant thereto in connection with its restaurant business. It is also the holder of a franchise from KFC, a corporation, authorizing it to sell Kentucky Fried Chicken. About two years ago, KFC Corporation was purchased by Heublein, Inc., and became a wholly owned subsidiary of that company. Heublein, Inc. is engaged in the manufacture and sale of alcoholic beverages throughout the nation, including Oregon. Petitioner under its franchise receives certain benefits and assumes certain liabilities, including payment of a fee of seven cents to KFC for each chicken consumed in its business operation. Petitioner is but one of a vast number of such franchise holders of KFC Corporation.

Following the acquisition of KFC Corporation by Heublein, the Commission refused to renew petitioner's liquor license.

ORS 471.455(1) provides:

"Except as permitted under ORS 471.465:

"(1) No manufacturer or wholesaler of any alcoholic liquor, and no officer, director or substantial stockholder of any corporate manufacturer or wholesaler of alcoholic liquor, shall have any right, title, lien, claim or interest, financial or otherwise, in, upon, or to the premises, equipment, business or merchandise of any licensee authorized to sell alcoholic liquors at retail."

The Commission denied the renewal of petitioner's license based upon that statute.

We agree. The statute is plain and unambiguous. We are not at liberty to read into it what it does not contain, nor to remove from it what it does. *Franklin* v. *State Ind. Acc. Com.*, 202 Or. 237, 274 P.2d 279 (1954). Petitioner contends in its brief that the Commission's decision stems from its insistence upon reading the statutes literally. The Commission is required to follow a plain and unambiguous statute just as we are.

It is conceded that KFC Corporation is now a wholly owned subsidiary of Heublein. As such, the licensee, in recognition of KFC's continuing financial claim against it pursuant to the franchise contract, makes regular payments to it giving Heublein a financial interest in petitioner's business. In turn the petitioner is directly dependent upon Heublein for the continuation of its franchise, which is an important property right of the petitioner and of substantial value to it.

Petitioner urges strongly that KFC Corporation is

not a manufacturer or wholesaler of any alcoholic beverage. We have previously held that the mere existence of a separate corporation inserted as a subsidiary between two principals will not insulate either principal from the clear intendments of the Oregon Liquor Control Law. *Palm Gardens, Inc.* v. *OLCC*, 11 Or. App. 20, 514 P.2d 888 (1973), Sup. Ct. *review denied* (1974); *Sportservice Corp.* v. *OLCC*, 15 Or. App. 226, 515 P.2d 731 (1973), Sup. Ct. *review denied* (1974). We adhere to that rule.

In the view we have taken of this matter, we find it unnecessary to consider the remaining assignments of error.

Affirmed.

STATE OF OREGON
COURT OF APPEALS

THE SPECK RESTAURANT, INC.,
Petitioner,

v.

OREGON LIQUOR CONTROL COMMISSION,
Respondent.

JUDGMENT and MANDATE
JUDICIAL REVIEW

No. CA 4928

This cause having come on to be heard on appeal and having been duly submitted and considered:

IT IS HEREBY ADJUDGED and ORDERED that the decision entered below in this cause is affirmed.

IT IS FURTHER ORDERED that respondent recover from petitioner costs and disbursements in this court in the amount of $30.

The cause is returned below for further proceedings pursuant to law and the opinion and order of the court entered FEBRUARY 9, 1976.

ISSUED at Salem, Oregon, APR. 14, 1976.

STATE OF OREGON
IN THE COURT OF APPEALS

March 17, 1976

Case Title: THE SPECK RESTAURANT v. O.L.C.C.

Richard M. Botteri
900 SW Fifth Ave, 23rd Floor
Portland, OR 97204

The Court of Appeals has today declined to reconsider its decision in the above-entitled matter.

cc: W. Michael Gillette

Supreme Court

STATE COURT ADMINISTRATOR
/s/ *Carol Justis*
Deputy Administrator

OREGON SUPREME COURT

April 13, 1976

Case Title: THE SPECK RESTAURANT, INC. v. OREGON LIQUOR CONTROL COMMISSION

CA No. 4928

George H. Fraser
Attorney at Law

The Supreme Court has today denied petitioner's Petition for Review in the above-entitled matter.
cc - W. Michael Gillette

STATE COURT ADMINISTRATOR
/s/ *Adell Johnson*
Assistant Administrator

APPENDIX B

Ore. Rev. Stat. 471.455(1), Vol. 4, p. 16

471.445 *Use of misleading mark or label on container; mixing liquors.* (1) No licensee shall use or allow the use of any mark or label on the container of alcoholic liquor which is kept for sale, if the container does not precisely and clearly indicate the nature of its contents or in any way might deceive any customer as to the nature, composition, quantity, age or quality of such liquor.

Ore. Rev. Stat. 472.160(3), Vol. 4, p. 36

472.160 *Grounds for refusing license.* The commission may refuse any applicant if it has reasonable grounds to believe:

(3) That any applicant to sell at retail for consumption on the premises has been financed or furnished with money or property by, or has any connection with, or is a manufacturer of, or wholesale dealer in, alcoholic liquor.

Ore. Rev. Stat. 472.180(11), Vol. 4, p. 37

472.180 *Grounds for suspension or revocation of license.* The commission may cancel or suspend any license granted if it finds:

(11) That there is any other reason which, in the opinion of the commission based on public convenience or necessity, warrants canceling or suspending such license.

APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF OREGON

THE SPECK RESTAURANT, INC.

Appellant,

v.

OREGON LIQUOR CONTROL COMMISSION,

Respondent.

No. CA 4928

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that The Speck Restaurant, Inc., the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of Oregon, affirming the Findings of Fact, Conclusion of Law, and Order of Respondent, entered herein on April 14, 1976.

This appeal is taken pursuant to 28 USC § 1257 (2).

GEORGE H. FRASER
George H. Fraser
Counsel for Appellant

FILED: June 30, 1976

CERTIFICATE OF MAILING

I hereby certify that I served the within NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES by delivering to the United States Post Office at Portland, Oregon, for delivery, a full, true and correct copy thereof addressed to the following:

Mr. Al J. Laue
Assistant Attorney General
State Office Building
Salem, OR 97310

and that postage thereon was prepaid.

DATED: June 29, 1976.

GEORGE H. FRASER
George H. Fraser
Counsel for Appellant